IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

1. S.B. CIVIL WRIT PETITION NO.2256/2007

Smt. Indu Rani Kothari vs. Ramavatar & Ors.

2. S.B. CIVIL WRIT PETITION NO.2255/2007

Smt.Indu Rani Kothari vs Shakhawat Hussain & Ors.

Date : 22.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.AK Rajvanshy, for the petitioners.

Mr.DD Chitlangi) for the respondents.
Mr.R Panwar)

- - - - -

Heard learned counsel for the parties.

These two writ petitions are decided by this common order because of the reason that the facts of two separate civil cases are identical in nature and the legal issue raised is also the same.

It appears from the facts of both the cases that plaintiffs Ramavatar and Shakhawat Hussain filed two separate suits for injunction against defendants – Sipu Devi and petitioner Smt. Indurani Kothari alleging that they are tenants in the property described in para no.2 of their plaints. The defendants want to forcibly dispossess them from their tenanted property. After that, both the plaintiffs submitted applications for amendment of the plaints under Order 6 Rule 17 CPC to amend the plaint so as to plead that one underground for which they initially pleaded as was not in their possession, is in fact in their tenancy and, therefore, they may be permitted to include that underground for the purpose of getting relief of injunction against their eviction from that underground. The contention of both the plaintiffs was that by mistake, they wrongly mentioned that the underground is not in their tenancy.

These amendment applications were allowed by the trial court by two separate orders. Hence, these two writ petitions have been preferred by defendants/landlords.

It will be worthwhile to mention here that in the copy of the plaint of Ramavatar, as submitted

by the petitioner along with the writ petition, it appears that in para no.2 therein, Ramavatar did not state that the underground was not in his tenancy. However, there is also no mention that the underground is in his tenancy. But in the para no.2 of the plaint of Shakhawat Hussain, there is a clear mention that the underground is not in his tenancy.

According to learned counsel for the petitioner/landlord, the plaintiffs pleaded specific fact about specific premises to be in their tenancy in para no.2 of the plaint and they further specifically admitted that other portion is not in their tenancy. This admission stands withdrawn by the permission of the Court as the trial court allowed the amendment applications of the plaintiffs and permitted them to plead that the portion which was not pleaded to be let out to them stands let out to them by amended pleadings. Not only this, in the two suits, both the tenants are claiming their tenancy for the same premises and that cannot be believed. In view of the above, the amendment sought is absolutely frivolous.

In view of the above, the trial court committed serious error of law by allowing the amendment in the plaints.

I considered the submissions of the learned counsel for the parties and perused the facts pleaded in the original plaints as well as the amendments sought by the original plaintiffs.

So far as the issue where the plaintiffs sought withdrawal of admission is concerned, it is settled law that an admission cannot be withdrawn by the party but an admission can be explained. The plaintiffs' contention that by mistake, they pleaded wrongly that one portion was not in their tenancy, then they can certainly show that that was a mistake, however, subject to objections which can be raised by the other party who can certainly prove that that was not a mistaken pleading. A mistake can be corrected and if it is a mischief, then that cannot be corrected. Therefore, it is a question of fact which can well be examined by the Court as per evidence and the party cannot be denied to plead that earlier he committed some mistake. The mistake is unintentional act of one party and if it remains as it is, then may have adverse consequence upon such party also. It is well known phrase that to err is human, therefore, mistake can be committed by any person. Merely because of mistake, one

cannot be punished and the Courts are not meant to punish only because of mistakes but constituted for imparting justice.

In view of the above and in the facts of these cases, it is not a withdrawal of admission but the plaintiffs want to explain his earlier admission with a plea that the earlier pleading was a mistaken pleading.

So far as inconsistency in two suits, if amendments remained allowed is concerned, it will be just and proper to observe that unless amendment is allowed, inconsistency cannot be there if the argument of the petitioner is correct. In the civil court in civil suits, the facts of each case are separate and independent and cannot be taken note of in another case unless they are brought on record in appropriate way by placing on record all the material. At this stage and at the time of order passed by the trial court, two suits were proceeding separately and two suits were not consolidated suits, therefore, pleadings of one case cannot be looked into another case.

Even if one plaintiff pleads facts inconsistent with the facts pleaded by other party in another suit, then also, it as such cannot

affect his suit because admission of another person (plaintiff) in his suit cannot bind the plaintiff of another suit. In view of the above reason also, I do not find that the amendment could have been refused in either of the case on the basis of inconsistency in the pleadings which may be in two separate suits of two separate plaintiffs.

In view of the above discussion, I do not find any illegality in the impugned orders in these two writ petitions. Consequently, these writ petitions, having no merits, are hereby dismissed.

However, the petitioner shall be free to take all proper defences which she finds just and proper in the facts of the case which includes taking any defence with respect to the motive and object for earlier pleadings and subsequent pleadings of the parties.

(PRAKASH TATIA), J.

S.Phophaliya